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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 LEO CONO,

7 Plaintiff,

8 v.

9 MARIA LOIACONO, et al.,

10 Defendants.
11

Case No. 2:18-cv-01442-GMN-BNW

**ORDER AND
REPORT AND RECOMMENDATION**

12 Presently before the court is pro se plaintiff Leo Cono's application to proceed *in forma*
13 *pauperis* (ECF No. 22), filed on October 25, 2018. This matter was reassigned to the undersigned
14 magistrate judge on May 2, 2019, for a report of findings and recommendations under 28 U.S.C.
15 § 636(b)(1)(A) and Local Rule IB 1-3. (Notice (ECF No. 33).)

16 **I. Background**

17 Under 28 U.S.C. § 1914(a) and the Judicial Conference Schedule of Fees, a \$400 filing
18 fee is required to commence a civil action in federal court. A person who is unable to pay the
19 filing fee may request the court's permission to proceed *in forma pauperis* ("IFP"), meaning
20 without paying the \$400 filing fee. *See* 28 U.S.C. § 1915(a)(1); LSR 1-1. It is within the court's
21 discretion to make a factual inquiry into a plaintiff's financial status and to deny an IFP
22 application if an individual is unable or unwilling to verify his poverty. *United States v.*
23 *McQuade*, 647 F.2d 938, 940 (9th Cir. 1981). If the court determines that an individual's
24 allegation of poverty is untrue, "it shall dismiss the case." 28 U.S.C. § 1915(e)(2)(A).

25 Cono previously moved to proceed without paying the filing fee, and the court denied the
26 application on the grounds that it was incomplete. (Order (ECF No. 20).) Specifically, Cono did
27 not respond to question three, which required him to provide information about income from (a)
28 business, profession, or other self-employment; (b) rent payments, interest, or dividends; (c)

1 pension, annuity, or life insurance payments; (d) disability, or worker's compensation payments;
2 (e) gifts, or inheritances; or (f) any other sources. (*Id.* at 2.) Cono also responded "N/A" to
3 various questions, and the court instructed Cono that "not applicable" is not responsive to the
4 questions. (*Id.*) The only substantive information regarding his financial situation concerned his
5 regular monthly expenses for a telephone (\$100), P.O. Box (\$75 for three months), and a public
6 storage locker (\$55). (*See id.*)

7 Given that the information Cono provided was insufficient for the court to determine
8 whether Cono is eligible to proceed IFP, the court denied his request without prejudice for Cono
9 to provide a complete IFP application. (*Id.*) The court specifically instructed Cono to file the
10 long form application (AO 239) and provided him with a courtesy copy of that form. (*Id.*) The
11 court instructed Cono to file form AO 239 or to pay the \$400 filing fee by November 16, 2018.
12 (*Id.* at 4.) The court expressly warned Cono that failure to submit "a completed long form IFP
13 application (AO 239)" or to pay "the \$400 filing fee before the November 16, 2018 deadline will
14 result in a recommendation to the district judge that this case be dismissed." (*Id.*)

15 Cono now renews his request to proceed IFP. (IFP Appl. (ECF No. 22).) He timely filed
16 the application, but he filed the short form application (AO 240) rather than the long form
17 application (AO 239) that the court provided to him. (*Id.*) Once again, the only substantive
18 information provided concerns his regular monthly expenses for a telephone (\$100), P.O. Box
19 (\$75 for three months), and a public storage locker (\$55). (*Id.* at 2.) He also provided a "not
20 applicable" response to questions five, seven, and eight, which concern assets he may possess, the
21 names of his dependents, and his debts or financial obligations. (*Id.*)

22 Given Cono's failure to follow the court's previous instructions, the court does not have
23 sufficient information to evaluate Cono's financial status and therefore will deny Cono's IFP
24 application. The court expressly warned Cono that if he failed to follow the court's instructions,
25 the court would recommend dismissal of his case. Accordingly, the court will recommend that
26 Cono's case be dismissed without prejudice under Local Rule IA 11-8 as a sanction for his failure
27 to comply with the court's orders. The court further will recommend denial of Cono's other
28 pending motions as moot.

1 **II. Conclusion and recommendation**

2 IT IS THEREFORE ORDERED that Cono's application to proceed *in forma pauperis*
3 (ECF No. 22) is DENIED.

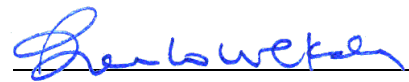
4 IT IS RECOMMENDED that Cono's case be dismissed without prejudice.

5 IT IS FURTHER RECOMMENDED that all pending motions (ECF Nos. 19, 22) in this
6 case be denied as moot.

7 **III. Notice**

8 This report and recommendation is submitted to the United States district judge assigned
9 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
10 may file a written objection supported by points and authorities within fourteen days of being
11 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
12 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d
13 1153, 1157 (9th Cir. 1991).

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15 DATED: September 10, 2019

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18 BRENDA WEKSLER
19 UNITED STATES MAGISTRATE JUDGE
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